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SERVICE DATE - OCTOBER 5, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-391 (Sub-No. 8X)

RED RIVER VALLEY & WESTERN RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN DICKEY COUNTY, ND AND BROWN COUNTY, SD

Decided: October 4, 2001

Red River Valley & Western Railroad Company (RRVW) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 18.3 miles of rail line from milepost 124.65 in or near Oakes, in Dickey County, ND, to milepost 116.3 in or near Hecla, in Brown County, SD. Notice of the exemption was served and published in the Federal Register on September 7, 2001 (66 FR 46863). The exemption is scheduled to become effective on October 9, 2001. On September 27, 2001, Governor William J. Janklow filed a letter comment opposing the abandonment on behalf of the State of South Dakota and the Office of the Governor. We will treat the Governor's letter as a petition to reopen.

In his filing, the Governor states his concern about the impact that the abandonment will have on small, local grain elevators and on the area economy in general. The Governor indicates that, if the line is abandoned, local grain producers will bear increased shipping costs and increased use of trucks to haul grain will adversely affect area roads not designed to handle the weight and volume. The Governor states that the Hecla Elevator (Hecla) previously shipped an average of 326 cars by rail from 1995 through 1998 before RRVW embargoed the line in 1999. He asserts that, if rail service were to resume, Hecla projects that it would ship 250 to 350 cars per year. In light of his concerns, the Governor asks that the Board review the matter and consider alternatives to keep the line open.

DISCUSSION AND CONCLUSIONS

The abandonment of a rail line that has been out of service for at least 2 years is exempt from the prior approval requirements of 49 U.S.C. 10903. To qualify for the exemption, a carrier (after properly notifying appropriate agencies) need only file a notice of exemption at least 50 days before it intends to abandon a particular line, and certify that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service over the line (or by a state or local government agency acting on its behalf) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. 49 CFR 1152.50(b). If the notice of exemption contains false or misleading information as to these factors, the carrier's use of the exemption is void ab initio and the Board will reject the notice. 49 CFR 1152.20(d)(3).

As requested by Governor Janklow, we are reviewing the record in this proceeding. We do not find sufficient basis, however, for granting the relief he seeks. The Governor does not argue that the notice contained false or misleading information that would void the exemption. Nor has he shown that this line does not qualify for exemption as an out-of-service line. While attacking and questioning the embargo placed on the line by RRVW, the Governor does not show that the embargo was unjustified. Rather, he suggests that there is a potential for future traffic and that this potential justifies continued service availability.

The Governor urges us to consider the effect on shippers and local communities. But, given the fact that shippers have not used the line for at least 2 years and have used alternative motor carrier service in the area, the record does not support a finding that abandonment would be economically harmful. In view of this total absence of traffic on the line, we do not believe that the assertions about future traffic provide a sufficient basis to deny the abandonment exemption.¹ We do emphasize, however, that our statute, at 49 U.S.C. 10904, provides opportunities for interested persons to pursue alternatives to abandonment through offers of financial assistance designed to keep the line open on either a temporary or permanent basis. The State may certainly pursue relief under that statutory provision. But, given the record before us, we will deny the Governor's petition to reopen.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition to reopen is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

¹ See CSX Transp., and Illinois Central Railroad Company—Abandonment Exemption—Between Varnado Switch and Bassfield, MS, Docket No. AB-43 (Sub-No. 156X) (ICC served Apr. 23, 1993).